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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-125

ALAMO LAND & CATTLE CO., INC.,
Petitioner,
VERSUS
STATE OF ARIZONA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICUS CURIAE BRIEF IN SUPPORT OF PETITION OF ALAMO LAND & CATTLE CO., INC.

DONALD I. MITCHELL
JANE G. ALSETH
900 Farm Credit Banks Building
151 North Main
Wichita, Kansas 67202

Attorneys for The Federal Land Bank of Wichita

PHILIP D. LUNT
500 Farm Credit Banks Building
151 North Main
Wichita, Kansas 67202

Attorney for Federal Intermediate Credit Bank of Wichita, Albuquerque Production Credit Association, Clovis Production Credit Association, Las Cruces Production Credit Association, Roswell Production Credit Association and Springer Production Credit Association

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The Federal Land Bank of Wichita and the Albuquerque, Clovis, Las Cruces, Roswell, and Springer Production Credit Associations as "federally chartered instrumentalities of the United States" operate under the provisions of the Farm Credit Act of 1971, Act of December 10, 1971, 85 Stat. 583, 12 U.S.C. § 2001 et. seq., in extending agricultural credit to farmers and ranchers in New Mexico. The Federal Intermediate Credit Bank of Wichita, also a federally chartered instrumentality of the United States and operating under the provisions of the Farm Credit Act of 1971, makes loans to these Production Credit Associations and may participate with them in making loans to farmers and ranchers. The Federal

Land Bank and the Albuquerque, Clovis, Las Cruces, Roswell and Springer Production Credit Associations have existing loans in the amount of $168,546,220.41 in the State of New Mexico. A substantial amount of which involves collateral assignments of state lease land.

Therefore, these instrumentalities have a great financial interest in seeking review of the lower court's decision, which, if not reviewed, sets a precedent that a lessee holds no compensable property interest.

STATEMENT OF THE CASE

This was a condemnation action commenced by the United States. The lands involved, designated in the record as tracts 304 and 305, are part of the grant to the State of Arizona by the United States under the New Mexico - Arizona Enabling Act (Act of June 20, 1910, 36 U.S. Stat. 557, as amended June 2, 1951, 65 Stat. 50). The lands, granted to Arizona for the support of public schools, are subject to the restrictions contained in § 28 of the Act. Alamo held the tracts under a ten year grazing lease at the time of the condemnation.

After the filing of the action, Arizona and Alamo stipulated with the United States that full compensation for the two tracts and the improvements thereon amounted to $118,620. After the distribution hearing, the District Court awarded Alamo $57,050 for its present leasehold interest as well as its reasonably prospective future leasehold interest and $3,600 for its

improvements. The balance was awarded to Arizona. On appeal to the Ninth Circuit, Alamo was awarded only the value of its improvements and the rest of the compensation was to be paid to Arizona.

REASONS FOR GRANTING THE WRIT

The Enabling Acts under which both New Mexico and Arizona were admitted to the Union are substantially the same. Other than the provisions regarding the length of the term of leases, the sections concerning the grant of public lands to be held in trust by the states are basically identical. 364 U. S. Stat. 557, §§ 10 and 28. Thus, the decision below that Arizona had no power to grant a compensable property right to Alamo and that Alamo, therefore, never acquired a property right for which it was entitled to compensation could have a far reaching effect in New Mexico as well as Arizona.

A. THE DECISION BELOW HAS FAR REACHING ECONOMIC IMPLICATIONS.

Whether or not a lessee has a property right in the leasehold could alter the future of agricultural lending in the State of New Mexico by the Farm Credit instrumentalities making loans in that state.

The Production Credit Associations, in making short term agricultural loans, make credit decisions based on credit factors which include the borrower's

financial statement showing state leases. The Production Credit Associations also obtain assignments of state leases as collateral. As of July 31, 1974, the Production Credit Associations held state lease land as collateral in connection with loans outstanding in the amount of $10,915,995.67. A holding that the lessee's interest in a state lease is not an interest in real property will eliminate a stable source of collateral and dilute the financial statements of farmers and ranchers; thereby, reducing the amount of short term agricultural credit available to them.

The Federal Land Bank, with the approval of the Farm Credit Administration, its regulatory agency, has made long term agricultural real estate loans in New Mexico in which state lease land has formed part of the security since the mid-1930's. State lease land, when offered as security with the base land, has been held not only to be "an interest in real estate" as required by the Farm Credit Act of 1971, Act of December 10, 1971, 85 Stat. 583, 12 U.S.C. § 2017, but also to have a supportive market value.

As of July 31, 1974, the Federal Land Bank of Wichita had an unmatured principal balance of $91,772,645.18 in loans outstanding in New Mexico. While exact figures are not available as to the percentage of this amount attributable to real estate mortgages secured in part by state lease land, it is substantial. $6,905,700.00 of that amount alone was loaned between January 1, 1973, and August 5, 1974, to farmers and ranchers whose security for these mortgages included state lease land.

The state leases enhance the market value of the base property; thus, the value of the entire operation is enhanced and a larger loan can be obtained by the rancher. However, if the lease were determined not to be "an interest in real estate" both the actual value of the lease and its enhancement value could not be considered in the appraisal; therefore, the market value of the entire operation would be lowered as would be the mortgage which the unit could support.

B. THE DECISION BELOW THAT A LEASEHOLD IS NOT A COMPENSABLE INTEREST IN REAL PROPERTY CONFLICTS WITH THIS COURT'S HOLDINGS AND WITH BASIC PROPERTY LAW.

That a lease is an interest in real property is not a new concept. In *United States v. General Motors Corp.*, 323 U.S. 373, 65 S. Ct. 357, 89 L. Ed. 311, the Court defined the term property by stating that "it deals with what lawyers term the individual's "interest" in the thing in question. That interest may comprise the group of rights for which the shorthand term is "a fee simple" or it may be the interest known as an "estate or tenancy for years." A leasehold interest, therefore, is an interest in real property. This principle was followed in decisions by the Supreme Courts of both New Mexico and Arizona. *Tri-Bullion Corp. v. American Smelting and Refining Co.*, 58 N. M. 787, 277 P.2d 293 (1954); *Yrisarri v. Wallis*, 76 N. M. 776, 418 P.2d 852 (1966); *Harbel Oil Company v. Steele*, 83 Ariz. 181, 318 P.2d

359 (1957). That this interest in property is an interest entitled to compensation has been commented on in another amicus brief in support of the opinion.

If the opinion below stands, its impact will be strongly felt by farmers and ranchers because of its impact on the agricultural lending institutions in New Mexico. Although the decision will not be binding on the Supreme Court of New Mexico, it will be highly persuasive. This persuasion would greatly reduce the stability of lending on ranches which are dependent on state lease land as an integral part of their operation. The uncertainty resulting from this decision may also affect lending on state leases in all the Western States.

If the opinion below stands, the Production Credit Associations would be severely hampered in their ability to provide short term agricultural loans. If the opinion below stands, New Mexico borrowers of the Federal Land Bank of Wichita would, also, be deprived of a source of credit to which they would otherwise be entitled by the Farm Credit Act of 1971.

If the state grazing leases retain the status given them in the court below, they will not be encompassed in the term "an interest in real estate". Under the Farm Credit Act of 1971, a Federal Land Bank loan must be secured by a first mortgage on interests in real estate. A Federal Land Bank loan cannot be predicated upon an interest in real estate which has been so diluted as to be nil.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald I. Mitchell
Jane G. Alseth
900 Farm Credit Banks Building
Wichita, Kansas 67202
Attorneys for the Federal Land Bank of Wichita

Philip D. Lunt
500 Farm Credit Banks Building
Wichita, Kansas 67202
Attorney for the Federal Intermediate Credit Bank of Wichita, Albuquerque Production Credit Association, Clovis Production Credit Association, Las Cruces Production Credit Association, Roswell Production Credit Association, and Springer Production Credit Association